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AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 70 FR 47, Jan. 3, 2005, unless otherwise noted.

Subpart 423.1 [Reserved]**Subpart 423.2—Energy and Water Efficiency and Renewable Energy****423.202 Policy.**

Information on Energy Star, energy efficient, water efficient, and low standby products covered by this policy is available via the Internet at <http://www.eere.energy.gov/femp/technologies/eeproducts.cfm>.

Subpart 423.4—Use of Recovered Materials**423.400 Scope of subpart.**

This subpart implements and supplements FAR policies and procedures for acquiring products and services when preference is given to offers of products containing recovered materials. This subpart further supplements FAR subpart 23.4 by providing guidance for affirmative procurement programs in accordance with Executive Order 13101 and 42 U.S.C. 6962.

423.402 [Reserved]**423.403 Policy.**

It is the policy of USDA to acquire and use Environmental Protection Agency (EPA) designated recycled content products.

423.404 Agency affirmative procurement programs.

The USDA affirmative procurement program (APP) policy applicable to all USDA agencies and staff offices is hereby established. The components of this APP include:

(a) *Recovered Materials Preference Program.* In accord with the requirements of Section 402(c) of Executive Order 13101, Greening the Government Through Recycling, Waste Prevention, and Federal Acquisition, USDA agencies will include, in all applicable solicitations and contracts, a preference for products and services which meet or exceed the EPA purchasing guidelines as contained in the EPA product Recovered Materials Advisory Notices (RMANs). Agencies may choose an evaluation factor preference, or other method of indicating preference in accord with their agency needs. Agencies will, as appropriate, eliminate virgin material requirements in contract specifications and replace them with a statement of preference for recycled materials.

(b) *Promotion program.* USDA agencies will actively promote a preference for recovered materials, environmentally preferable products, and biobased products in contacts with vendors, in written materials, and other appropriate opportunities.

(c) *Reasonable estimation of recovered materials used in the performance of contracts.* USDA agencies annually will provide in writing to the USDA Senior Procurement Executive, in response to a call for data for the Resource Conservation and Recovery report, reasonable estimates, certification, and verification of recovered material used in the performance of contracts.

(d) *Annual review and monitoring of effectiveness of the program.* USDA agencies will provide an annual assessment of the effectiveness of their affirmative

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procurement program actions in increasing the purchase and use of EPA designated products.

(e) *Purchase of EPA designated products.* USDA agencies will require that 100% of purchases of EPA-designated products contain recovered material, unless the item cannot be acquired—

(1) Competitively within a reasonable time frame;

(2) Meeting appropriate performance standards; or

(3) At a reasonable price.

(f) The 100% purchase requirement of paragraph (e) of this section applies to all USDA agency purchases, including those at or below the micro-purchase threshold.

423.405 Procedures.

(a) The threshold of purchase for EPA designated items is \$10,000 per year at the USDA departmental, not individual agency, level. Therefore, the APP requirements above, including the 100% purchase requirement, apply at the individual agency and staff office level.

(b) Contracting officers should refer to EPA's list of designated products and products identified as recycled content when purchasing supplies or services. Information on EPA designated products is available at: www.epa.gov/cpg/products.htm.

(c) All agencies and USDA Contracting Officers must take necessary actions to carry out the provisions of the USDA APP policy described in this subpart.

Subpart 423.5—Drug-Free Workplace

423.506 Suspension of payments, termination of contract, and debarment and suspension actions.

(a) The contracting officer may recommend waiver of the determination to suspend payments, to terminate a contract, or to debar or to suspend a contractor.

(b) The recommendation shall be submitted through the HCA to the SPE and shall include a full description of the disruption of USDA operations should the determination not be waived.

(c) The SPE will submit the request for a waiver to the Secretary with a recommendation for action.

Subpart 423.6—Notice of Radioactive Material

423.601 Requirements.

The HCA shall establish a system of instructions to identify the installation/facility radiation protection officer.

Subpart 423.7—Contracting for Environmentally Preferable Products and Services

423.703 Policy.

(a) USDA's Affirmative Procurement Program promotes energy-efficiency, water conservation, and the acquisition of environmentally preferable products and services. In its acquisitions, USDA will support federal "green purchasing" principles in the acquisition of products and services that are environmentally preferable or that are biobased content products and services.

(b) USDA agencies will actively promote this preference for environmentally preferable products and biobased products in contacts with vendors, in written materials, and other appropriate opportunities.

PART 424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 424.1—Protection of Individual Privacy

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424.103 Procedures.

424.104 Contract clauses.

Subpart 424.2—Freedom of Information Act

424.203 Policy.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.